

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA]	
]	
v.]	No. 05-CR-30042-MLW
]	
CESAR CRUZ and]	
RICARDO DIAZ]	

**GOVERNMENT’S RESPONSE TO DEFENDANT CESAR CRUZ’S
REQUEST FOR VOIR DIRE QUESTION REGARDING GANGS**

Defendant Cesar Cruz (“CRUZ”) has requested the following *voir dire* question:

There may be testimony in this case regarding gangs and gang affiliation. It may be alleged that one or more defendants was a member of the so-called “Latin Kings.” Would your knowledge or impressions of gangs tend to render you unable to be fair and impartial in deciding this matter?

While the government does not object to a *voir dire* question on the issue of gangs, it objects to the phrasing above. Since most people have the impression that gangs commit crimes, the final sentence above creates the risk of over-exclusion – potential jurors who have the general impression that gangs commit crimes (that is, most people) will be led to believe that they cannot be sufficiently impartial, and so would be excluded even though they could in fact be impartial in this case.

The government suggests a *voir dire* question more specific to individual witnesses:

There may be testimony in this case regarding gangs and gang affiliation. It may be alleged that one or more defendants or witnesses was a member of the so-called “Latin Kings.” Would knowing that a witness in this case was a member of a gang so affect your judgment that you would be unable to fairly and impartially consider that person’s testimony, or fairly and impartially decide this case?

Phrased this way, the question avoids excluding people who have a vague sense that gangs commit crimes and focuses only on people whose judgment may be improperly affected by

hearing that a particular witness had been a member of a gang.

Respectfully submitted,

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By: /s/ Andrew E. Lelling
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